UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,584	09/29/2000	John K. Kaltenmark	10022/043	3191

33391 7590 10/13/2006

BRINKS HOFER GILSON & LIONE
ONE INDIANA SQUARE, SUITE 1600
INDIANAPOLIS, IN 46204

EXAMINER	
BAYARD, DJENANE M	
ART UNIT	**PAPER NUMBER**
2141	

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/676,584	KALTENMARK ET AL.	
	Examiner	Art Unit	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification and Exhibits C, D or E as evidence in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Exhibits merely provided a listing of Operations Architecture Tools without sufficient information regarding the subject matter of the claims as to enable one skill ed in the art to make and use the claimed invention. The Evidence presented only provides a list of tools that were already well known in the art (ex. Software distribution tool, a configuration and asset tool, a fault management and recovery tool...) without describing how to make and how to use the invention or presenting any improvement.

The Evidence presented failed to provide a detail description as to enable one with ordinary skill in the art to make and use the claimed invention. Furthermore, the Evidence

presented failed to provide any improvement to the tools already known in the art and available on the Market at the time of the publication of the Evidence presented (See Exhibit D, page 12-4, *Software distribution Tool already available form Microsoft, HP and Tivoli;* See Exhibit D, page 12-8, *Automatic asset and configuration collection capability is included in many vendors solutions, including Openview from HP and POLYCENTER System Census from Digital Equipment Corp).* (See MPEP 2164).

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. The Evidence presented in the specification and Exhibits C, D and E leads the Office to conclude that the Evidence are not sufficient to teach how to make and use the claimed invention. Information is missing about many essential part or relationships between parts. A vague description of software tools already known to one with ordinary skill in the art does not provide any tangible result.

Claims 1-28 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a

well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)). Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful. Apart from the utility requirement of 35 U.S.C. 101, usefulness under the patent eligibility standard requires significant functionality to be present to satisfy the useful result aspect of the practical application requirement. See Arrhythmia, 958 F.2d at 1057, 22 USPQ2d at 1036. **Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make the invention eligible for patenting. The claimed invention as a whole must produce a "useful, concrete and tangible" result to have a practical application.** (See MPEP 2105). In conclusion, since the Evidence presented in Exhibit C, D and E failed to enable the claimed limitation and provide any subject matter that represents nothing more than a vague idea, the rejection stand as stated in the previous Office Action.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 2004/01071275 to Guheen et al.

a. As per claim 1, Guheen et al teaches An operations architecture for a netcentric computing system, comprising: a server connected with a client (See page 39, paragraph [0921]); and a software distribution tool (See page 56, paragraph [1481]), a configuration and asset management tool (See page 40, paragraph [0950]), a fault management and recovery management tool (See page 84, paragraph [2373-2376]), a capacity planning tool (See page 83, paragraph [2324], a performance management tool (See page 80, paragraph [2231-2232]), a license management tool (See page 95, paragraph [2759-2760]), a remote management tool (See page 80, paragraph [2324]), a event management tool (See page 83, paragraph [2321-2322]) , a systems monitoring and tuning tool (See page 97, paragraph [2830-2832]), a security tool configured to limit access of said client to said server based on role based access control (See page 44, paragraph [1099], page 152, paragraph [3980],), a user administration tool (See page 91, paragraph [2625-2626]), a production control application set configured to automatically

archive a predetermined set of files (See page 85, paragraph [2396-2397], page 86 paragraph [2454] and page 89, paragraph [2563-2564]) and a help desk tool adapted to measure the performance of support personnel supporting said server and said client in said netcentric computing system (See page 82 paragraph [2302-2312] and page 83, paragraph [2324-2326).

b. As per claims 19 and 24 Guheen et al teaches an operations architecture for a netcentric computing system, comprising: a server connected with a client (See 39, paragraph [0921]); a software distribution tool for providing automated delivery to, and installation of, an application on said server or said client (See page 56, paragraph [1481], Software and data distribution tools enable automated distribution of data and software to the workstations and servers in the development environment); a configuration and asset management tool for managing a plurality of predetermined assets connected with said netcentric computing system (See page 40, paragraph [0950]), Configuration Management tools cover the version control, migration control and change control of system components such as code and its associated documentation); a fault management and recovery management tool for assisting in the diagnosis and correction of a plurality of system faults in said netcentric computing system (See page 84 , paragraph [2373-2376], when a negative event has been brought to the attention of the system, actions are undertaken within Fault Management to define, diagnose, and correct the fault); a capacity planning tool for monitoring a plurality of predetermined system usage levels in said netcentric computing system (See page 85, paragraph [2395], Capacity Modeling & Planning ensures that adequate resources will be in place to meet the SLA requirements, resources can include such things as physical facilities, computers, memory/disk space...); a performance management tool

for monitoring the performance of applications running on said netcentric computing system (See page 80, paragraph [2232], Performance Management tools support application performance testing...these tools monitor the real-time execution and performance of software...they are also useful in identifying potential bottlenecks or processing anomalies); a license management tool for managing and controlling license information for applications running on said netcentric computing system (See page 95, paragraph [2760], License Management ensures that software licenses are being maintained throughout the distributed system and that license agreements are not being violated); a remote management tool allowing support personnel from said netcentric computing system to take control of said client (See page 80, paragraph [2324]); an event management tool for handling a plurality of predetermined events in said netcentric computing system (See page 83, paragraph [2321-2322], Event Management receives, logs, classifies and presents event messages on a console(s) based on pre-established filters or thresholds); a systems monitoring and tuning tool for monitoring applications, middleware, databases, networks, clients and servers (See page 97, paragraph [2830-2832], Provide real time monitoring and interactive tuning of the environment. Monitoring capabilities include the ability to measure CPU and disk utilization, memory occupancy, transaction response time... Instance level tuning and configuration parameters (memory, I/O, journalling) to address performance problems); a security tool that includes a security application that provides security to said netcentric computing system, said security tool configured to limit access of said client to said server based on role based access control (See page 44, paragraph [1099], page 152, paragraph [3980]); Security Management tools provide the components that make up the security layer of the final system, and may provide required

security controls); a user administration tool for administering users of said netcentric computing system (See page 91, paragraph [2625-2626]); a production control application set for scheduling and handling a plurality of production processes on said netcentric computing system, said production control application configured to automatically archive a predetermined set of files (See page 85, paragraph [2396-2397], page 86 paragraph [2454] and page 89, paragraph [2563-2564], Ensures that production activities are performed and controlled as required and as intended. Production Scheduling determines the requirements for the execution of scheduled jobs across a distributed environment); and a help desk tool including a help application that provides users of applications on said netcentric computing system with assistance, said help desk tool adapted to measure the performance of support personnel ((See page 82 paragraph [2302-2312] and page 83, paragraph [2324-2326]; As with End User Services in the centralized model, the Help Desk is the single point of contact for all end users. This unit has end-to-end accountability for all user incidents and problems (See page 83, paragraph [2324-2326]).

c. As per claim 2, Guheen et al teaches wherein said software distribution tool provides automated delivery to, and installation of, applications on said server and said client (See page 56, paragraph [1481]).

d. As per claim 3, Guheen et al teaches wherein said configuration and asset management tool that manages a plurality of predetermined assets connected with said netcentric computing system (See page 40, paragraph [0950]).

e. As per claims 4, 20 and 25, Guheen et al teaches wherein said predetermined assets is selected from the group consisting of said server, said client, a product license information file, a warranty information file, a vendor name file, a logical device information file and a physical device information file (See page 93, paragraph [2681]).

f. As per claim 5, Guheen et al teaches wherein said fault management and recovery management tool assists in the diagnosis and correction of a plurality of system faults in said netcentric computing system (See page 84, paragraph [2373-2376]).

g. As per claim 6, Guheen et al teaches wherein said capacity planning tool monitors a plurality of predetermined system usage levels in said netcentric computing system (See page 85, paragraph [2394-2395]).

h. As per claims 7, 21 and 26, Guheen et al teaches wherein said system usage levels is selected from the group consisting of server processing usage, server bandwidth usage, server storage usage and client usage (See page 85, paragraph [2395]).

i. As per claim 8, Guheen et al teaches wherein said performance management tool monitors the performance of applications running on said netcentric computing system (See page 80, paragraph [2231-2232]).

k. As per claim 9, Guheen et al teaches wherein said license management tool manages and controls license information for applications running on said netcentric computing system (See page 95, paragraph [2759-2760]).

l. As per claim 10, Guheen et al teaches wherein said remote management tool allows support personnel from said netcentric computing system to take control of said client (See page 80, paragraph [2324]).

m. As per claim 11, Guheen et al teaches wherein said event management tool is responsible for handling a plurality of predetermined events in said netcentric computing system (See page 83, paragraph [2321-2322]).

n. As per claims 12, 22 and 27, Guheen et al teaches wherein said predetermined events is selected from the group consisting of disk space indications, central processing unit utilization indications, database error indications, network error indications and file and print service indications (See page 83, paragraph [2322]).

o. As per claims 13, Guheen et al teaches wherein said systems monitoring and tuning tool monitors applications, middleware, databases, networks, clients and servers on said netcentric computing system (See page 97, paragraph [2830-2832]).

p. As per claim 14, Guheen et al teaches wherein said security tool includes applications that provide security to said netcentric computing system (See page 44, paragraph [1099]).

q. As per claim 15, Guheen et al teaches wherein said user administration tool is used for administering users of said netcentric computing system (See page 91, paragraph [2625-2626]).

r. As per claim 16, Guheen et al teaches wherein said production control application set is used for scheduling and processing a plurality of production processes on said netcentric computing system (See page 85, paragraph [2396-2397).

s. As per claims 17, 23 and 28, Guheen et al teaches wherein said production control application set is selected from the group consisting of a print management tool, a file transfer and control tool, a mass storage management tool, a backup and restore tool, a archiving tool and a system startup and recovery tool (See page 85, paragraph [2396-2397]).

t. As per claim 18, Guheen et al teaches wherein said help desk tool provides a help application for assisting users of applications on said netcentric computing system (See page 83, paragraph [2324-2326]).

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER